

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

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July , 1989

Registration T.A. No. 1383 of 1987(T)

1. Yadu Nath Singh
2. Vishram Singh
3. Arvind Singh
4. Sunder Lal
5. Ram Autar
6. Rajbir
7. Raj Bahadur
8. Amar Singh
9. Ajmer Singh
10. Bhanwar Singh
11. Dalip Singh

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Petitioners

Vs.

Union of India and others Respondents

Hon' Mr. D.K. Agrawal, J.M.

Hon' Mr. R. Balasubramaniam, A.M.

(Hon' Mr. D.K. Agrawal, J.M.)

The above application was registered after receipt of record of Civil Misc. Writ Petition No. 1411 of 1984 from the High Court of Judicature at Allahabad, under the provisions of Section 29 of the Administrative Tribunals Act, 1985. The petitioners 11 in number as mentioned above have alleged that they had worked more than the statutory period of six months in the Northern Railway, Allahabad Division and as such, they have acquired the status of temporary railway employee. They have further alleged that the petitioners were considered for permanent absorption/recruitment/selection as Class IV employees and after their names were approved for the same, they were subjected to medical examination and found fit; that some how the respondents Nos. 3 to 6 stopped taking work from them between the period from April, 1983 to July, 1983 on the basis of some confidential instructions/orders received by them. The petitioners further alleged that they were

Dr. Agul

entitled to be absorbed as regular Class IV employees under the railway administration. Therefore, they have prayed for a writ of mandamus.

2. The Railway Administration in their counter affidavit have denied that the petitioners had acquired the status of temporary employees within the meaning of Railway Establishment Code. They further pleaded that they had secured employment by mis-representation based on the forged casual labour cards and they alleged that the action taken by the Railway Administration was legal and proper.

3. There is no doubt that the petitioners were initially recruited as casual labourers. The petitioners have specifically mentioned the period vide Annexure-I to the writ petition during which they served the Railway Administration. The Railway Administration, on the other hand in their counter affidavit have failed to give specific period during which the petitioners were actually engaged by them. In the circumstances, we have no other option, but to accept the information furnished by the petitioners. The period disclosed in Annexure-I works out to about two years. Therefore, the petitioners would be deemed to have been acquired the status of temporary employee as observed by the Hon'ble Supreme Court in the case of Indra Pal Yadav Vs. Union of India 1985 (2) S C 648, within the meaning of sub para (b)(1) of para 2501 of the Indian Railway Establishment Manual, and as such, they would become entitled to the rights and privileges laid-down in para 2511 read with Chapter XXIII of the Manual. Consequently, they would also fall within the purview of

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Discipline and Appeal Rules, 1968.

4. A perusal of counter affidavit indicates that the petitioners were put off from duty on the ground that they had obtained employment by mis-representing and presenting forged casual labour card. Thus a conclusion of misconduct has been drawn behind the back of the petitioners in violation of the Principle of "audi alteram partem". We may refer to a decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Iqbal Singh (1976 (1) SLR- 525) wherein their Lordships have laid emphasis on reasonable opportunity of hearing to be provided to an employee by an administrative authority on the basis of principle of natural justice. Then since the petitioners were engaged in the employment of the Railway Administration, for a continuous period of more than six months and thereby, acquired a status of a temporary employee, they would also be entitled to the benefits of D.A. rules, as held in the case of Mata Prasad Tewari and others Vs. Union of India (1987 A.T.L.T. 546); Union of India Vs. Kartik Chand Banerjee (ATR 1987 (2) CAT- 218) and Sri Raj Singh Vs. Union of India (ATR 1987 (2) CAT- 168). Therefore, the impugned order cannot be sustained in law.

5. Before we part with the case, we may also observe that the provision of Section 25-F of the Industrial Disputes Act, 1947 have also not been followed in this case which also makes the impugned order bad in law.

6. In the result, the petition is liable to be allowed. The termination of the services of the petitioners are hereby set aside. The petitioners are declared to be

Dr. Aggarwal

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continuing in service of the respondents. The respondents are directed to reinstate the petitioners within two months of this order. However, the petitioners would not be entitled to get wages for the period they actually ^{did} not work². It will be open to the respondents to initiate such disciplinary action as warranted by law against any of the petitioners for any alleged misconduct or misrepresentation. There will be no order as to costs.

N. Balasubramanian
MEMBER (A) 28/7/89

D. K. Aggarwal
MEMBER (J) 28.7.89

(sns)

July 28th, 1989

Allahabad.